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Treatment of Noncitizens Under the Patient Protection and Affordable Care Act

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Summary

The 111th Congress enacted the Patient Protection and Affordable Care Act (P.L. 111-148, PPACA), and amended it a week later by passing the Health Care and Education Reconciliation Act of 2010 (P.L. 111-152). (PPACA refers to P.L. 111-148 as amended by P.L. 111-152.) On January 19, 2011, the House passed H.R. 2, which would repeal PPACA. It is possible that the 112th Congress will examine other legislation to amend parts of PPACA. One issue that may arise during any debate to amend provisions in PPACA is the eligibility of aliens (noncitizens) for some of the key provisions of the act.

Aliens who are "lawfully present in the United States" are subject to the heath insurance mandate and are eligible, if otherwise qualified, to participate in the high-risk pools and the exchanges, and they are eligible for premium credits and cost-sharing subsidies. PPACA *expressly* exempts unauthorized (illegal) aliens from the mandate to have health coverage and bars them from a health insurance exchange. Unauthorized aliens are not eligible for the federal premium credits or cost-sharing subsidies. Unauthorized aliens are also barred from participating in the temporary high-risk pools.

To enforce the alien eligibility requirements under PPACA, the act requires the Secretary of Health and Human Services to establish a program to determine whether an individual who is to be covered in the individual market by a qualified health plan offered through an exchange, or who is claiming a premium tax credit or reduced cost-sharing, is a citizen or national of the United States or an alien lawfully present in the United States.

Some have raised concerns that PPACA created an inequality between U.S. citizens and some noncitizens with incomes at or below 133% of the federal poverty level (FPL) with respect to eligibility to participate in an exchange and receive premium credits or cost-sharing subsidies. In general, all U.S. citizens and Medicaid-eligible noncitizens with incomes at or below 133% of FPL will be eligible for Medicaid, while similarly situated Medicaid-ineligible lawfully present noncitizens will be eligible to participate in an exchange and possibly to receive the credits or subsidies.

This report will be updated if warranted by legislative events.

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Introduction

The 111th Congress enacted the Patient Protection and Affordable Care Act (P.L. 111-148, PPACA) and the Health Care and Education Reconciliation Act of 2010 (P.L. 111-152).[1] On January 19, 2011, the House passed H.R. 2, which would repeal PPACA. Nonetheless, it is possible that the 112th Congress will examine other legislation to amend parts of PPACA.[2] During any debate to amend PPACA, one issue that may arise is the eligibility of aliens (noncitizens) for some of the key provisions of the act.

This report discusses alien eligibility for the provisions in PPACA that have restrictions based on immigration status: participation in high-risk pools, the requirement to maintain health insurance, the ability to purchase insurance through an exchange, and eligibility for premium credits and cost-sharing subsidies.[3] The report concludes with an analysis of data from the Current Population Survey (CPS) that illuminate some of the possible effects of PPACA on the health insurance coverage of the noncitizen population.

The Noncitizen Population

Table 1 presents the definitions of some of the terms related to the noncitizen population and several of the different immigration statuses. In addition, because alien eligibility under PPACA is governed by the term "aliens who are lawfully present," the table outlines which aliens are considered to be lawfully present.

Table 1. Definitions of Select Immigration Terms and Categories

Term	Definition	Lawfully Present?
Noncitizen	Anyone who is not a citizen or national of the United States; this is synonymous with alien. The noncitizen may be in the United States temporarily or permanently, and either lawfully present or present without authorization.	N.A.
Alien	Anyone who is not a citizen or national of the United States; this is synonymous with noncitizen.	N.A.

[1] PPACA was signed into law on March 23, 2010. On March 30, 2010, PPACA was amended by P.L. 111-152, the Health Care and Education Reconciliation Act of 2010. In this report, PPACA refers to P.L. 111-148 as amended by P.L. 111-152.

[2] Examples of other bills to amend or repeal PPACA introduced in the 112th Congress include but are not limited to H.R. 118, H.R. 127, H.R. 215, S. 16, S. 82, and S. 196.

[3] For more information on these provisions in PPACA, see CRS Report R41331, *Individual Mandate and Related Information Requirements under PPACA*, by David Newman and Hinda Chaikind; CRS Report R40942, *Private Health Insurance Provisions in the Patient Protection and Affordable Care Act (PPACA)*, by Hinda Chaikind, Bernadette Fernandez, and Mark Newsom; and CRS Report R41137, *Health Insurance Premium Credits in the Patient Protection and Affordable Care Act (PPACA)*, by Bernadette Fernandez and Thomas Gabe.

Term	Definition	Lawfully Present?
	Subsets of the Noncitizen/Alien Population	
Immigrant	A noncitizen who is legally admitted to the United States, as defined in the Immigration and Nationality Act (INA), and comes to live permanently in the United States.	Yes
Legal Permanent Resident (LPR)	A noncitizen who is legally admitted to the United States, as defined in the INA, and comes to live permanently in the United States. In the INA, it is synonymous with the term immigrant.	Yes
Asylees/Refugees	A noncitizen who is legally admitted to the United States based on fears of persecution due to one of five characteristics—race, religion, nationality, membership in a particular social group, or political opinion—in his native country. It is expected that asylees and refugees will become LPRs.	Yes
Nonimmigrants (includes temporary workers, visitors for business or pleasure, exchange visitors, representatives of foreign governments and press, victims of crime, trafficking victims, fiancées of U.S. citizens, and foreign investors)	A noncitizen who is present in the United States for a temporary period of time and a specific purpose.	Yes
Unauthorized (illegal) alien	A noncitizen who lacks legal authorization to be present in the United States. Unauthorized aliens may have entered the United States between ports of entry, entered with false documents, or overstayed or violated the terms of their visas.	No

Source: Congressional Research Service (CRS) analysis of the Immigration and Nationality Act (8 U.S.C. § 1101 *et. seq.*)

The Estimated Size of the Noncitizen Population in the United States

Using the March 2010 Current Population Survey (CPS), the Congressional Research Service (CRS) estimated that as of March 2010 there were approximately 37.6 million foreign-born persons in the United States, approximately 12% of the U.S. population.[4] The foreign-born population was comprised of approximately 16 million naturalized U.S. citizens[5] and 21.6 million noncitizens.[6]

[4] A foreign-born person is anyone in the United States who was born in another country and did not automatically acquire U.S. citizenship at birth. The entire U.S. population was estimated to be 304.3 million people in March 2010 (CRS analysis of the CPS). For more information on the foreign-born population, see CRS Report R41592, *The U.S. Foreign-Born Population: Trends and Selected Characteristics*, by William A. Kandel.

[5] Under U.S. immigration law, all legal permanent residents are potential citizens and may become so through a process known as *naturalization*.

[6] Since the CPS does not ask citizenship status, CRS does not use the CPS to estimate the different noncitizen populations (e.g., legal permanent residents, temporary workers, unauthorized aliens).

The literature often cites estimates published by the Pew Hispanic Center. Researchers at the Pew Hispanic Center used the same data but adjusted the survey weights to account for perceived noncitizen undercounts in the survey.[7] They also assigned a specific immigration status (e.g., legal permanent resident, unauthorized alien) to each foreign-born survey respondent and used a methodology to estimate the illegally present population.[8] The Pew Hispanic Center estimated that in March 2010 there were approximately 40.2 million foreign-born persons in the United States, and of the foreign-born population, approximately 14.9 million (37%) were naturalized U.S. citizens, 12.4 million (31%) were legal permanent residents (LPRs), 1.7 million (4%) were temporarily in the United States (i.e., nonimmigrants), and 11.2 million (28%) were estimated to be unauthorized (illegal) aliens.[9]

Treatment of Noncitizens in the Patient Protection and Affordable Care Act (PPACA)

The following section discusses alien eligibility for the following provisions under PPACA: high-risk pools, the heath insurance mandate, the exchanges, and premium credits and cost-sharing subsidies. In general, aliens are separated into two groups for eligibility purposes under PPACA: aliens who are "lawfully present in the United States" are eligible for the provisions discussed below while aliens who are not "lawfully present in the United States" (i.e., unauthorized/illegal aliens) are ineligible.

High-Risk Pools

PPACA (§ 1101) required the Secretary of the Department of Health and Human Services (Secretary) to establish a temporary high-risk pool program to provide health insurance coverage for eligible individuals during the period beginning on the date the program was established and ending on January 1, 2014, the date when the exchanges will be operational. This program began offering coverage on August 1, 2010.[10] Individuals are eligible for the high-risk pool if they have

[7] Part of the undercount of noncitizens comes from noncitizens reporting that they are naturalized U.S. citizens.

[8] Jeffrey S. Passel and D'Vera Cohn, *Unauthorized Immigrant Population: National and State Trends, 2010*, Pew Hispanic Center, Washington, DC, February 1, 2011, p. 25, http://pewhispanic.org/files/reports/133.pdf.

[9] Other studies for different time periods have produced slightly different estimates. For example, the Center for Immigration Studies, using the monthly public use files of the CPS, estimated that in the first quarter of 2009 (January/February/March), the unauthorized alien population was approximately 10.8 million. The Pew Hispanic Center estimated the number of unauthorized aliens for March 2009 at approximately 11.1 million. In addition, using the American Communities Survey, the DHS Office of Immigration Statistics estimated that in January 2010 there were 10.8 million unauthorized aliens in the United States. Steven A. Camarota and Karen Jensenius, *A Shifting Tide: Recent Trends in the Illegal Immigrant Population*, Center for Immigration Studies, Washington, DC, July 2009, http://cis.org/IllegalImmigration-ShiftingTide. Jeffrey S. Passel and D'Vera Cohn, *U.S. Unauthorized Immigration Flows Are Down Sharply Since Mid Decade*, Pew Hispanic Center, Washington, DC, September 1, 2010, http://pewhispanic.org/files/reports/126.pdf. Michael Hoefer, Nancy Rytina, and Bryan C. Baker, *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2010*, Department of Homeland Security (DHS), Office of Immigration Statistics, Washington, DC, February 2011, http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_ill_pe_2010.pdf. For a discussion of the differences in the methodologies of the estimates, see CRS Report RL33874, *Unauthorized Aliens Residing in the United States: Estimates Since 1986*, by Ruth Ellen Wasem.

[10] U.S. Department of Health and Human Services (HHS), The Office of Consumer Information and Insurance Oversight, *Initiatives and Programs: Pre-Existing Condition Insurance Plan*, http://www.hhs.gov/ociio/initiative/index.html.

not been covered under creditable coverage during the six-month period prior to application for coverage in the high-risk pool and have a pre-existing condition as determined following guidance issued by the Secretary.[11] To participate in the temporary high-risk pool program, a person must be a citizen or national of the United States or be lawfully present in the United States.[12] Thus, unauthorized aliens are ineligible for participation in the high-risk pool program because they are not lawfully present in the United States.

Health Insurance Mandate

PPACA includes an individual mandate as of 2014 to maintain health insurance and has tax penalties for noncompliance. In other words, individuals—with some exceptions—who do not maintain acceptable health insurance coverage for themselves and their dependents would be required to pay a penalty.[13] All aliens who are lawfully present are covered by the requirement to maintain health insurance.[14] Unauthorized (illegal) aliens are expressly exempted from this mandate. In addition, the act specifies that a person is only considered lawfully present if the person is, and is reasonably expected to be for the entire period of enrollment, a U.S. citizen or national or an alien who is lawfully present in the United States.

Until the exchanges are operational, it is unknown what the shortest period of enrollment will be and whether certain nonimmigrants who are in the United States for limited periods of time, in many cases under six months, would be covered by the mandate (e.g., tourists (B-visas), cultural exchange (J-visas), performers and athletes (O- and P-visas)).[15] In addition, no penalty will be imposed on those without coverage for less than three months (with only one period of three months allowed in a year),[16] so for aliens in the United States for less than three months (e.g., most tourists)[17] there would be no consequences to not having health insurance.

Tax Liability of Noncitizens[18]

Because the penalties for noncompliance with the individual mandate are tax-based, the following section discusses the rules for taxation of noncitizens. In particular, understanding these rules might be important because there has been debate about the extent to which the Internal Revenue

[11] The primary source for guidance on PPACA is CRS Report R40942, *Private Health Insurance Provisions in the Patient Protection and Affordable Care Act (PPACA)*, by Hinda Chaikind, Bernadette Fernandez, and Mark Newsom.

[12] PPACA § 1101(d)(1).

[13] For more information on the health insurance mandate, see CRS Report R41331, *Individual Mandate and Related Information Requirements under PPACA*, by David Newman and Hinda Chaikind.

[14] PPACA § 1501.

[15] Some make a distinction between resident and non-resident nonimmigrants. For an example of this distinction, see Bryan C. Baker, *Estimates of the Resident Nonimmigrant Population in the United States: 2008*, Department of Homeland Security, Office of Immigration Statistics, Washington, DC, June 2010, http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_ni_pe_2008.pdf.

[16] PPACA § 1501.

[17] This includes B-visa holders and those coming to the United States under the Visa Waiver Program, which allows citizens of 37 countries to come to the United States for tourism or short-term business purposes for up to 90 days; CRS Report RL32221, *Visa Waiver Program*, by Alison Siskin.

[18] This section is based on CRS Report RS21732, *Federal Taxation of Aliens Working in the United States and Selected Legislation*, by Erika K. Lunder.

Service, in light of the limits PPACA places on enforcement,[19] will be able to collect penalties from individuals who do not have other tax liability.[20] To the extent that this might be a concern, it would seem to arise regardless of the individual's citizenship status.[21]

All foreign nationals working in the United States are subject to U.S. tax laws. For federal tax purposes, foreign nationals working in the United States are classified as resident or nonresident aliens.[22] These terms are in the Internal Revenue Code (I.R.C.) but do not exist in the Immigration and Nationality Act (INA).[23] As a result, the specific immigration statuses under the INA do not align directly with the terms resident and nonresident alien.[24]

In general, an individual is a nonresident alien unless he or she meets the qualifications under one of the following residency tests:

- Green card test: the individual is a lawful permanent resident of the United States at any time during the current year, or
- Substantial presence test: the individual is present in the United States for at least 31 days during the current year and at least 183 days during the current year and previous two years. For computing the 183 days, a formula is used that counts all the qualifying days in the current year, one-third of the qualifying days in the immediately preceding year, and one-sixth of the qualifying days in the second preceding year.[25]

While resident aliens are subject to the same tax treatment as U.S. citizens, nonresident aliens are subject to different treatment, such as generally being taxed only on income from U.S. sources. Nonetheless, their income that is "effectively connected" with a U.S. trade or business is generally taxed by the same rules and at the same rates as the income of U.S. citizens and resident aliens. There are several situations in which an individual may be classified as a nonresident alien even though he or she meets the substantial presence test. For example, an individual will generally be treated as a nonresident alien if he or she has a closer connection to a foreign country than to the United States, maintains a tax home in the foreign country, and is in the United States for fewer than 183 days during the year.[26] Another example is that an individual in the United

[19] I.R.C. § 5000A(g)(2).

[20] See, for example, Timothy Noah, *Maybe the Individual Mandate Is Enforceable, The IRS commissioner explains how he'll make you buy health insurance*, Slate, April 7, 2010, available at http://www.slate.com/id/2250098.

[21] There is debate over whether individuals (both U.S. citizens and aliens) who do not have any tax liability have to file tax returns. For example, if an alien is not working in the United States, he or she may be subject to the health insurance mandate but may not be obligated to file a tax return.

[22] It is possible for an individual to be a resident alien and a nonresident alien during the same year. For an explanation of the rules on determining residency starting and ending dates and dual-status filing, see *IRS Publication 519: U.S. Tax Guide for Aliens*, which is available at http://www.irs.gov.

[23] 8 U.S.C. § 1101 *et seq*.

[24] For example, based on time in the United States and treaty obligations, some foreign agricultural workers (H-2A visa holders) would be considered resident aliens while others would be considered nonresident aliens for tax purposes.

[25] I.R.C. §§ 7701(b)(1)(A) and (b)(3). A nonresident alien may elect, under certain circumstances, to be treated as a resident alien if the substantial presence test is met in the year following the election; I.R.C. § 7701(b)(4). A dual-status or nonresident alien married to a U.S. citizen or resident may qualify to be treated as a resident alien for the entire year; I.R.C. §§ 6013(g) and (h).

[26] I.R.C. § 7701(b)(3)(B).

States under an F-, J-, M-, or Q-visa[27] may be treated as a nonresident alien if he or she has substantially complied with visa requirements.[28] Other individuals who may be treated as nonresident aliens even if they would otherwise meet the substantial presence test include employees of foreign governments and international organizations, regular commuters from Canada or Mexico, aliens who are unable to the leave the United States because of a medical condition, foreign vessel crew members, and athletes participating in charitable sporting events.[29] Additionally, depending on where the individual is from, there may be an income tax treaty between that country and the United States with provisions for determining residency status.[30]

Exchanges

Under PPACA, "American Health Benefit Exchanges" will begin operation by 2014. An exchange cannot be an insurer, but it will provide eligible individuals and small businesses with access to insurers' plans in a comparable way. In addition, based on income certain individuals may qualify for a tax credit toward their premium costs and a subsidy for their cost-sharing; the credits and subsidies will be available only through an exchange beginning in 2014.[31] The law allows all lawfully present noncitizens to purchase insurance through an exchange and bars unauthorized aliens from obtaining insurance through an exchange.[32]

Premium Credits and Cost-Sharing Subsidies

Based on their income, certain individuals may qualify for a tax credit toward their premium costs and a subsidy for their cost-sharing; the credits and subsidies will be available only through an exchange beginning in 2014.[33] All lawfully present aliens who meet specified criteria are eligible for the premium tax credit and cost-sharing subsidies.[34] Unauthorized (illegal) aliens are ineligible for the tax credit and subsidies. In addition, the law provides specific rules for calculating the credits and subsidies for mixed-status families.[35]

[27] These individuals are temporarily admitted into the United States as students, teachers, trainees, and cultural exchange visitors.

[28] I.R.C. § 7701(b)(5). There are limits on how long an individual may be exempt from the substantial presence test.

[29] I.R.C. §§ 7701(b)(3)(D), (b)(5), and (b)(7).

[30] See, for example, Treas. Reg. § 301.7701(b)-7.

[31] CRS Report R40942, *Private Health Insurance Provisions in the Patient Protection and Affordable Care Act (PPACA)*, by Hinda Chaikind, Bernadette Fernandez, and Mark Newsom.

[32] PPACA § 1312(f)(3).

[33] For more information on the premium credits and cost-sharing subsidies, see CRS Report R41137, *Health Insurance Premium Credits in the Patient Protection and Affordable Care Act (PPACA)*, by Bernadette Fernandez and Thomas Gabe.

[34] PPACA § 1401(a) and § 1402(f). Because the tax credits are refundable, aliens who do not have any tax liability will be eligible for these credits. Advance payment of the tax credits will go directly to the insurer (§ 1412(a)(3)). Subsidies are paid to the insurance company and not directly to the enrollee.

[35] See I.R.C. § 36B(f) created by PPACA § 1401(a) and § 1402(e)(1)(B). In this context, a mixed-status family is one where at least one member is an unauthorized alien and another family member is either lawfully present or a U.S. citizen.

Interaction Between Alien Eligibility for Credits and Medicaid Eligibility

Some have raised concerns that PPACA created an inequality between U.S. citizens and some noncitizens with incomes at or below 133% of the federal poverty level (FPL) with respect to eligibility to participate in an exchange and receive premium credits or cost-sharing subsidies.[36] In general, all U.S. citizens and Medicaid-eligible noncitizens with incomes at or below 133% of the FPL will be eligible for Medicaid, while similarly situated Medicaid-ineligible lawfully present noncitizens will be eligible to participate in an exchange and possibly to receive the credits or subsidies. The following section explores the reasons for these differences.

Background: Noncitizen Eligibility for Medicaid

Under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA),[37] as amended, noncitizens' eligibility for Medicaid largely depends on their *immigration status*, whether they arrived in the United States (or were on a program's rolls) before *August 22, 1996*,[38] and how long they have lived and worked in the United States. Notably, to be eligible for Medicaid aliens must also meet the program's financial and categorical eligibility requirements.[39] Most legal permanent residents (LPRs) entering the United States after August 22, 1996, are barred from Medicaid for five years, after which time they are eligible at the state's option. However, states may also choose to use state and federal Medicaid funds to cover pregnant women and children who are "lawfully residing" in the United States.[40] In addition, states have the option to use state-only funds to provide medical coverage for other LPRs within five years of their arrival in the United States.[41]

Refugees and asylees[42] are eligible for Medicaid for seven years after arrival. After the seven years, they may be eligible for Medicaid at the state's option. LPRs with a substantial (10-year) U.S. work history or a military connection are eligible for Medicaid without regard to the five-year bar. LPRs receiving Supplemental Security Income (SSI) on or after August 22, 1996, are

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[36] For example see John Goodman, "How Do Illegal Immigrants Fare Under ObamaCare?" *National Center for Policy Analysis, John Goodman's Health Policy Blog*, August 10, 2010., http://healthblog.ncpa.org/how-do-illegal-immigrants-fare-under-obamacare/; and Senator Tom Coburn and Senator John Barrasso, *Bad Medicine: A Check-up on the New Federal Health Law*, Washington, DC, July 2010, p. 27, http://coburn.senate.gov/public/index.cfm?a=Files.Serve&File_id=722faf8b-a5be-40fd-a52b-9a98826c1592.

[37] P.L. 104-193, also called the Welfare Reform Act.

[38] The enactment date of PRWORA.

[39] Medicaid is a means-tested entitlement program operated by states within broad federal guidelines. To qualify, an individual must meet both categorical and financial eligibility requirements. Current categorical eligibility requirements relate to the age or other characteristics of an individual. People aged 65 and over, certain persons with disabilities, children and their parents, and pregnant women are among the categories of individuals who may currently qualify.

[40] This term has been defined broadly by the Centers for Medicare and Medicaid Services (CMS) and includes qualified aliens as defined in 8 U.S.C. § 1641 (i.e., those eligible for federal public benefits, such as LPRs, asylees, and refugees) and aliens in valid nonimmigrant statuses, provided they are residents of the state in which they are applying in order to qualify for Medicaid. For a full list of the immigration categories included in the definition of "lawfully residing in the United States," see Centers for Medicare and Medicaid Services: Center for Medicaid, CHIP and Survey & Certification, *Re: Medicaid and CHIP Coverage of "Lawfully Residing" Children and Pregnant Women*, Department of Health and Human Services, Letter to State Health Officials (SHO # 10-006, CHIPRA # 17), July 1, 2010.

[41] For a detailed discussion of noncitizen eligibility for Medicaid, see pp. 5-7 in CRS Report R40772, *Noncitizen Health Insurance Coverage and Use of Select Safety-Net Providers*, by Alison Siskin.

[42] Refugee and asylee statuses require a finding of persecution or a well-founded fear of persecution in situations of "special humanitarian concern" to the United States. Refugees are admitted from abroad.

eligible for Medicaid because Medicaid coverage is required for all SSI recipients. Nonimmigrants and unauthorized aliens are barred from Medicaid.[43] However, states may choose to cover these individuals using state-only funds.

Persons with Incomes up to 133% of Poverty

Beginning in 2014, or sooner at state option, PPACA requires states to expand Medicaid to certain individuals who are under age 65 with income up to 133% of the FPL. Thus, in 2014 all non-elderly U.S. *citizens* and certain noncitizens with income up to 133% FPL will be eligible for Medicaid.[44] This reform not only expands eligibility to a group that is not currently eligible for Medicaid (low-income childless adults), but it also raises Medicaid's mandatory income eligibility level for certain existing groups to 133% of the FPL and is considered the most significant expansion of Medicaid eligibility in many years.[45] Nonetheless, PPACA did not amend the current immigration status-based restrictions (i.e., alien eligibility requirements) on receiving Medicaid (discussed above).

As discussed above, beginning January 1, 2014, qualifying individuals will receive advanceable, refundable tax credits toward the purchase of an exchange plan.[46] To be eligible for the premium credits, a taxpayer must have a household income that is above 100% of the FPL but does not exceed 400% of the FPL. In addition, lawfully present noncitizens who have household incomes that do not exceed 100% of the FPL and who are ineligible for Medicaid due to their alien status will be deemed to have income at 100% of the FPL and will be *eligible* for premium credits.[47] Notably, if a person who applies for premium credits in an exchange is determined to be eligible for Medicaid, the exchange will have that person enrolled in Medicaid.[48]

Under PPACA, lawfully present noncitizens (including some LPRs within five years of entry) who are ineligible for Medicaid due to their alien status are eligible to participate in an exchange and for premium credits.[49] Similarly situated U.S. citizens and lawfully present noncitizens who are eligible for Medicaid would be enrolled in Medicaid and would not be eligible to participate in an exchange, and, as a result, they would be ineligible for the premium credits.[50]

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[43] Those with T-visas status (i.e., trafficking victims) are nonimmigrants but are Medicaid eligible.

[44] One might say that, notwithstanding what the new statute says, eligibility will in fact be required up to 138% of the FPL because § 1004(e) of P.L. 111-152 also requires income equivalent to 5% of the FPL to be disregarded from household income. CRS Report R41126, *Private Health Insurance: Changes Made by H.R. 4872, the Health Care and Education Reconciliation Act of 2010*, by Hinda Chaikind et al.

[45] CRS Report R41210, *Medicaid and the State Children's Health Insurance Program (CHIP) Provisions in PPACA: Summary and Timeline*, coordinated by Julie Stone.

[46] The advance payment will go directly to the insurer; § 1412(a)(3).

[47] Without this provision (§ 1401), noncitizens with household incomes that did not exceed 100% of the FPL and who were ineligible for Medicaid would have been ineligible to participate in an exchange and ineligible for the credits and subsidies.

[48] § 1311(d)(4)(F) and § 1413(a).

[49] Those who qualify for premium credits will also be eligible for assistance in paying any required cost-sharing for their health services. Thus, these noncitizens may also be eligible for cost-sharing subsidies.

[50] Technically, someone who is Medicaid eligible would be able to decline Medicaid coverage and participate in an exchange. However, they would not be eligible for premium credits or cost-sharing subsidies. Thus, it seems unlikely that a Medicaid-eligible person would choose to decline Medicaid coverage and pay for insurance through an exchange.

Verification of Alien Status Under PPACA

To enforce the alien eligibility requirements under the act, § 1411 of PPACA requires the Secretary of Health and Human Services (HHS) to establish a program to determine whether an individual who is to be covered through an exchange plan, or who is claiming a premium tax credit or reduced cost-sharing, is a citizen or national of the United States or an alien lawfully present in the United States. This requirement is similar to and compatible with the Department of Homeland Security (DHS) Systematic Alien Verification for Entitlements (SAVE) system established by § 1137(d) of the Social Security Act.[51] The SAVE system is also the basis for the E-Verify electronic employment eligibility verification system,[52] as discussed below.

The verification system created under PPACA will use three pieces of personal data to verify citizenship and immigration status. The Social Security Administration (SSA) will verify the name, social security number, and date of birth of the individual. For those attesting to be U.S. citizens, the attestation will be considered substantiated if it is consistent with SSA data. For individuals who do not claim to be U.S. citizens but attest to be lawfully present in the United States, the attestation will be considered substantiated if it is consistent with DHS data.[53] PPACA requires such verification of all individuals seeking exchange coverage regardless of whether they would be federally subsidized or would pay premiums entirely on their own.

Some argue that because the proposed verification system does not include a biometric identifier,[54] it could lead to identity theft; however, requiring applicants to provide documents with biometric identifiers could lead to the inappropriate denial of credits and subsidies to eligible persons. The system only verifies that the name, SSN, and date of birth match the SSA's records and that immigration documents match DHS records; as a result, a person (e.g., a U.S. citizen, an unauthorized alien) who is using the documents of an eligible person would not necessarily be denied access to an exchange or premium and cost-sharing subsidies.[55] Nonetheless, while all lawfully present noncitizens have documents with biometric identifiers,[56] U.S. citizens do not necessarily have such documents,[57] and, as a result, requiring such biometric identifiers may

[51] The DHS Systematic Alien Verification for Entitlements (SAVE) system provides federal, state, and local government agencies access to data on immigration status that are necessary to determine noncitizen eligibility for public benefits. DHS does not determine benefit eligibility; rather, SAVE enables the specific program administrators to ensure that only those noncitizens and naturalized citizens who meet their program's eligibility rules actually receive public benefits. The SAVE system does not require a Social Security number (SSN). The key to SAVE is the immigration document number (e.g., number from the individual's permanent resident card, employment authorization document, or I-94 document) and the person's name, date of birth, and nationality. For more on the SAVE System, see CRS Report R40889, *Noncitizen Eligibility and Verification Issues in the Health Care Reform Legislation*, by Ruth Ellen Wasem.

[52] For a discussion of E-Verify, see CRS Report R40446, *Electronic Employment Eligibility Verification*, by Andorra Bruno.

[53] CRS Report R40889, *Noncitizen Eligibility and Verification Issues in the Health Care Reform Legislation*, by Ruth Ellen Wasem.

[54] Examples of biometric identifiers include digitized photographs, finger prints, and iris scans. The biometric identifier included in U.S. passports is a digitized photograph.

[55] For a full discussion of issues related to verification, see CRS Report R40889, *Noncitizen Eligibility and Verification Issues in the Health Care Reform Legislation*, by Ruth Ellen Wasem; and CRS Report RL33973, *Unauthorized Employment in the United States: Issues, Options, and Legislation*, by Andorra Bruno.

[56] For a full discussion of these documents, see CRS Report R40889, *Noncitizen Eligibility and Verification Issues in the Health Care Reform Legislation*, by Ruth Ellen Wasem.

[57] The United States does not require its citizens to have legal documents that verify their citizenship and identity (i.e., (continued...)

make it more difficult for some eligible U.S. citizens to gain access to an exchange and the premium credits and cost-sharing subsidies.[58]

In a recent evaluation of the E-Verify system for employment, a system that is often compared to the new system under PPACA because it electronically verifies both U.S. citizens and noncitizens, researchers estimate that 6.2% of all queries relate to unauthorized aliens, and that in about half (54%) of these queries the unauthorized aliens receive an inaccurate finding of being work-authorized primarily due to identity theft. Thus, the researchers estimate that about 3.3% of all queries receive a false positive verification. In other words, it is estimated that of the unauthorized aliens that are run through the system, approximately 54% who are using false documents are not identified by the system. [59] In an effort to better detect and deter identity fraud, DHS (which administers E-Verify) is taking steps that include adding more photographs to the system and developing methods to prevent stolen identities from being used in the system.[60]

Summary of Eligibility of Unauthorized Aliens under PPACA

As previously discussed, PPACA *expressly* exempts unauthorized (illegal) aliens from the mandate to have health coverage[61] and bars them from a health insurance exchange.[62] Unauthorized aliens are not eligible for the federal premium credits[63] or cost-sharing subsidies.[64] Unauthorized aliens are also barred from participating in the temporary high-risk pools.[65]

(...continued)

national identification cards). U.S. passports contain biometric identifiers (i.e., digitized photographs), as do some states' drivers licenses.

[58] For example, the Deficit Reduction Act of 2005 (P.L. 109-171), as amended, requires states to obtain satisfactory documentation of citizenship to determine eligibility for Medicaid. In a 2007 survey by the U.S. Government Accountability Office (GAO) assessing the impact of this requirement, 22 of 44 states that responded reported declines in enrollment due to the new citizenship documentation requirement. Of the 22 states reporting enrollment declines to GAO, a majority (16 states) attributed them to Medicaid coverage delays or losses of Medicaid coverage for individuals who appeared to be U.S. citizens. The extent to which the citizenship requirement is deterring ineligible noncitizens from applying for Medicaid is unknown. GAO, *States Reported That Citizenship Documentation Requirement Resulted in Enrollment Declines for Eligible Citizens and Posed Administrative Burdens*, GAO-07-889, June 2007. For a more detailed discussion of the Medicaid citizenship documentation requirements and the effects on enrollment, see CRS Report RS22629, *Medicaid Citizenship Documentation*, by Ruth Ellen Wasem.

[59] Westat, *Findings of the E-Verify Program Evaluation*, Report Prepared for the Department of Homeland Security, Rockville, MS, December 2009, p. xxxi, http://www.uscis.gov/USCIS/E-Verify/E-Verify/Final%20E-Verify%20Report%2012-16-09_2.pdf.

[60] U.S. Citizenship and Immigration Services, *Westat Evaluation of the E-Verify Program: USCIS Synopsis of Key Findings and Program Implications*, Washington, DC, January 28, 2010, http://www.uscis.gov/USCIS/Native%20Docs/Westat%20Evaluation%20of%20the%20E-Verify%20Program.pdf.

[61] I.R.C § 5000A(d)(3) as created by PPACA § 1501(b).

[62] In other words, unauthorized aliens are not considered to be "qualified individuals"; § 1312(f)(3).

[63] The premium credits would be provided as advanceable, refundable federal tax credits through individual tax returns. The credits could only be obtained through qualifying individuals filing tax returns and only by individuals enrolled in a plan offered through an exchange. As discussed, unauthorized aliens are not eligible to participate in a health insurance exchange. (H.R. 3950 § 1411). For more information on the premium credits, see CRS Report R41137, *Health Insurance Premium Credits in the Patient Protection and Affordable Care Act (PPACA)*, by Bernadette Fernandez and Thomas Gabe.

[64] Those who qualify for premium credits and are enrolled in certain exchange plans (i.e., at the silver tier) would also be eligible for assistance in paying any required cost-sharing for their health services. Section 1402(e) of PPACA (continued...)

Possible Effects of PPACA on Health Insurance Coverage for the Noncitizen Population

The following section uses analysis from the Current Population Survey (CPS) to provide an overview of the health insurance coverage of U.S. citizens and noncitizens, and to gain some insight into the possible effects of the changes in PPACA to Medicaid eligibility on the health insurance coverage of noncitizens.

Overview of Data and Methodology

The data used in this study are from the March 2010 supplement of the CPS, the main source of labor force data for the United States. The CPS is a household survey sample of the non-institutionalized civilian population conducted by the Census Bureau for the Bureau of Labor Statistics (BLS). The data are weighted to reflect the population.[66] All differences discussed in the text of this report are statistically significant at the .05 level unless otherwise specified.[67]

The comparisons in this report are based on three groups residing in the United States: (1) native-born U.S. citizens, (2) naturalized U.S. citizens, and (3) noncitizens. Although one of the issues surrounding health insurance coverage for noncitizens is the number of unauthorized aliens living in the United States, it is not possible using CPS data to differentiate between aliens who are in the United States legally or illegally, nor is it possible to differentiate between different categories of noncitizens (e.g., legal permanent residents, temporary workers, students, refugees, asylees).

The CPS asks whether the respondent has had various types of coverage during the previous year. Thus, respondents may have more than one type of health insurance during the year. Theoretically, an uninsured respondent is someone who lacked any type of health insurance during the past year and the term does not capture people who were uninsured for part of the year. However, research has shown that the CPS estimates appear to reflect the number of people uninsured at a point in time (that is, when the survey was taken) rather than the number uninsured for the entire previous year.[68] The types of health insurance used in this report are private insurance (both employer sponsored and individually purchased),[69] Medicare, Medicaid,[70] and

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prohibits unauthorized aliens from receiving a cost-sharing reduction; CRS Report R41137, *Health Insurance Premium Credits in the Patient Protection and Affordable Care Act (PPACA)*, by Bernadette Fernandez and Thomas Gabe.

[65] Specifically, PPACA (§ 1101(d)(1)) states that an individual is eligible for participation in the high-risk pool if he/she "is a citizen or national of the United States or is lawfully present in the United States."

[66] For more detailed information on federal data sources for analysis of the uninsured, see CRS Report RL31275, *Health Insurance: Federal Data Sources for Analyses of the Uninsured*, by Chris L. Peterson and Christine M. Devere.

[67] For a full discussion of the CPS and the methodology, see Appendix A of CRS Report R40772, *Noncitizen Health Insurance Coverage and Use of Select Safety-Net Providers*, by Alison Siskin.

[68] For example, see National Institute for Health Care Management, *A Primer on the CPS Estimate of America's Uninsured*, NIHCM Brief, Washington, DC, August 29, 2006; and Congressional Budget Office (CBO), *How Many People Lack Health Insurance and For How Long?*, Washington, DC, May 2003.

[69] Private insurance may be purchased through the individual's employer, through the employer of a spouse or parent, or on one's own. For general information on health insurance coverage, see CRS Report R41665, *Characteristics of Individuals With and Without Health Insurance, 2009*, by Carol Rapaport; and CRS Report RL32237, *Health Insurance: A Primer*, by Bernadette Fernandez.

military or veterans coverage.[71] If the respondent reported not having any of these types of coverage, they are considered uninsured.

Overview of Health Insurance Coverage, 2009

As shown in **Figure 1**, noncitizens are more than three times as likely as native-born U.S. citizens, and more than two times as likely as naturalized U.S. citizens, to be uninsured: 46% of noncitizens lacked any type of health insurance, compared with 14.1% of the native-born population and 19% of the naturalized population. Similarly, noncitizens have the lowest rate of private insurance coverage (37.1%), while native-born citizens have a slightly higher rate of private health insurance than naturalized citizens (66.3% and 60.5%, respectively).[72]

The noncitizen population also has the lowest rate of Medicare coverage, most likely due to the relatively young age of the population and the decreased likelihood that noncitizens would meet the eligibility requirements for Medicare. Naturalized citizens have the highest rate of Medicare coverage, which may be attributable to the fact that the naturalized population is, on average, older than both the native-born and the noncitizen populations.[73] Noncitizens are slightly less likely to have Medicaid coverage (15.4%) than native-born citizens (15.9%), while naturalized citizens are the least likely to have Medicaid coverage (12.4%). Lastly, due to the fact that, in general, noncitizens must be legal permanent residents (LPRs) to join the Armed Forces, the noncitizen population has much lower rates of military/veterans coverage (0.8%) than the naturalized (3.2%) and native-born (4.4%) populations.[74]

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[70] Includes the State Children's Health Insurance Program (CHIP) and other state programs for low-income individuals.

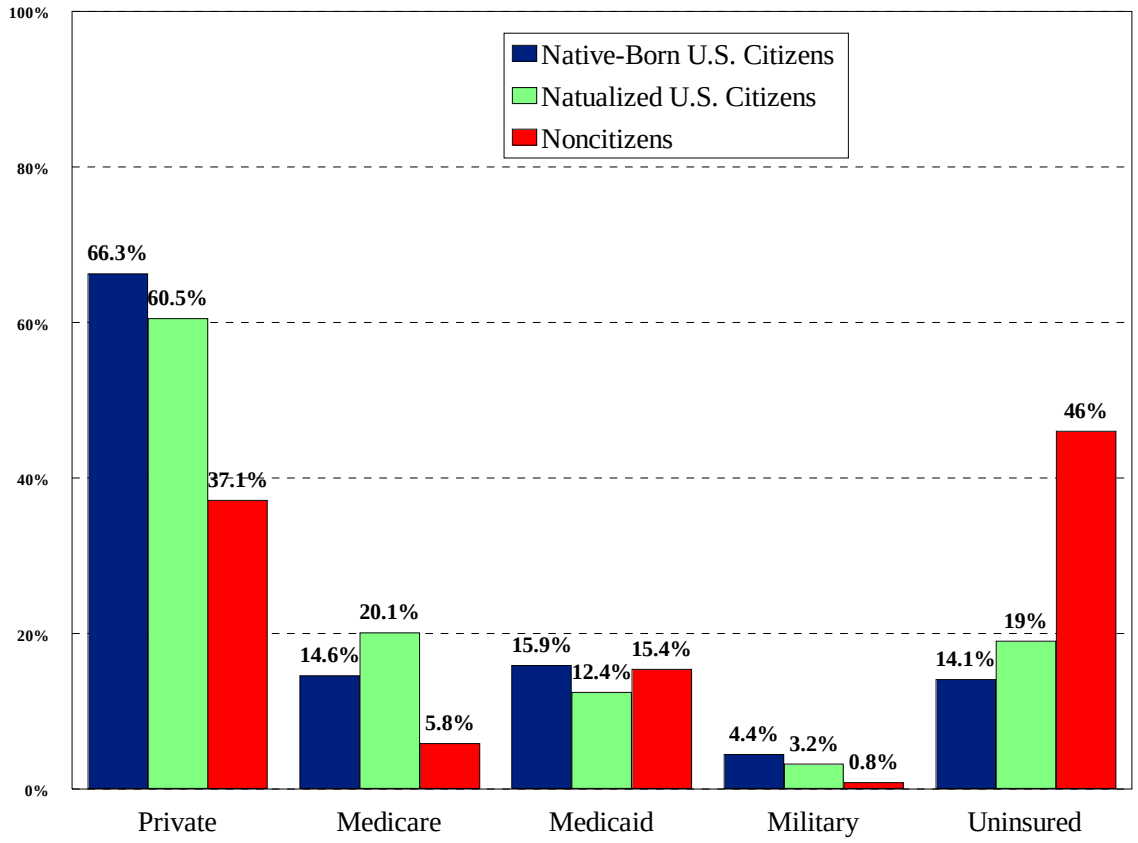
[71] Military or veterans insurance includes TRICARE (formerly known as CHAMPUS), which is a program administered by the Department of Defense (DOD) for military retirees as well as families of active duty, retired, and deceased service members. This system of military and private health insurance offers benefits to active duty personnel and other beneficiaries, including dependents of active duty personnel, military retirees, and dependents of retirees. It also includes CHAMPVA, the Civilian Health and Medical Program for the Department of Veterans Affairs, which is primarily a fee-for-service program that provides reimbursement for most medical care for certain eligible dependents and survivors of veterans rated permanently and totally disabled from a service-connected condition. For more information, see CRS Report RL33537, *Military Medical Care: Questions and Answers*, by Don J. Jansen. For more information on CHAMPVA, see CRS Report RS22483, *Health Care for Dependents and Survivors of Veterans*, by Sidath Viranga Panangala.

[72] Private insurance includes both employer-sponsored insurance and health insurance purchased solely by the individual.

[73] According to CRS analysis in March 2010, approximately 20% of naturalized U.S. citizens were age 65 or over, compared to 13% of native-born citizens and 7% of noncitizens.

[74] The CPS interviews the civilian population, not the active duty military population.

Figure 1. Health Insurance by Citizenship Status, 2009



Source: CRS analysis of the March 2010 CPS.

Note: Differences are significant at the .05 level.

Poverty Levels, 2009

Overall, noncitizens tend to be poorer than native-born and naturalized citizens. Thirty-five percent of noncitizens have family incomes that are less than 133% of poverty,[75] compared with 19.2% of native-born citizens and 16.9% of naturalized citizens (see **Table 2**). As shown in **Table 3**, expectedly, as family income increases, people are more likely to have private health insurance. Nonetheless, for all levels noncitizens are less likely than citizens to have private insurance, but this difference is smallest for those whose family income is more than 400% of poverty. Only 12.9% of noncitizens with family incomes less than 133% of poverty have private insurance, while 24.5% of native-born citizens and 21.7% of naturalized citizens with similar family incomes have private insurance. For those with family incomes that are more than 400% of poverty, 76.6% of noncitizens, 88.4% of native-born citizens, and 82.8% of naturalized citizens have private insurance.

[75] In 2010, the poverty threshold (which is used mainly for statistical purposes and differs slightly from the poverty guideline used for program eligibility and other administrative purposes) for a family with two adults and two children was $22,162. Children are excluded from CPS-based poverty analyses if they are living with a family to which they are not related.

Table 2. Percent of Federal Poverty Level (FPL) by Citizenship Status, 2009

Percent of Federal Poverty Level (FPL)	Percent of Population (Number in Millions)		
	Native-Born Citizen	Naturalized Citizen	Noncitizen
133% or less	19.2%	16.9%	34.7%
	(51.1)	(2.7)	(7.5)
133%+ to 400%	43.3%	44.7%	46.3%
	(115.2)	(7.2)	(10)
400%+	37.5%	38.3%	19%
	(99.9)	(6.1)	(4.1)
Total	100%	99.9%	100%
	(266.2)	(16)	(21.6)

Source: CRS analysis of March 2010 CPS.

Notes: Totals may not sum to 100% due to rounding. Differences compared to noncitizens are significant at the .05 level, except for the difference between naturalized citizens and noncitizens at more than 133% to 400% of poverty, which is significant at the .1 level.

Table 3. Federal Poverty Level by Insurance Status and Citizenship, 2009

Type of Health Insurance	Federal Poverty Level	Native-Born	Naturalized	Noncitizen
Private	133% or less	24.5%	21.7%	12.9%
	133%+ to 400%	65.9	56.2	39.1
	400%+	88.4	82.8	76.6
Medicare	133% or less	14.7	28.2	5.8
	133%+ to 400%	17.9	21.6	5.6
	400%+	10.8	14.7	6.3
Medicaid	133% or less	45.7	33.6	25.2
	133%+ to 400%	13.6	11.8[a]	12.6
	400%+	3.2[a]	3.7[a]	4.2
Uninsured	133% or less	26.2	34.2	60.7
	133%+ to 400%	15.6	21.9	46.8
	400%+	6.2	8.8	17.5

Source: CRS analysis of March 2010 CPS.

Notes: Analysis excludes children living with a family to whom they are unrelated. Percentages may sum to more than 100% because persons may have more than one type of insurance. Unless otherwise noted, all differences with noncitizens are significant at the .05 level.

a. Difference with noncitizens not significant at the .05 level

As discussed above (see **Figure 1**), although noncitizens are only slightly less likely overall to have Medicaid coverage (12.6%) than native-born citizens (14.4%), and naturalized citizens are the least likely to have Medicaid coverage (11.4%), when examining those at or below 133% of poverty, noncitizens are much less likely than the native born to be covered by Medicaid. For those with family incomes at or below 133% of poverty, 25.2% of noncitizens are covered by Medicaid, compared with 33.6% of naturalized citizens and 45.7% of native-born citizens.[76] The difference between Medicaid coverage for those with family incomes above 133% and not exceeding 400% of poverty is much smaller, with 12.6% of noncitizens and 13.6% of native-born citizens being covered by Medicaid.

For all income levels, noncitizens are more likely to be uninsured than U.S. citizens. For example, as **Table 3** illustrates, for those with incomes above 133% and not exceeding 400% of poverty, 46.8% of noncitizens are uninsured, compared to 15.6% of native-born citizens and 21.9% of naturalized citizens.

It is likely that due to the changes made in PPACA to Medicaid eligibility,[77] the rates of Medicaid coverage for the U.S. citizen and noncitizen populations with incomes at or below 133% of poverty will increase. However, due to the alien eligibility requirements for Medicaid, which were unchanged by PPACA, this increase in Medicaid coverage (and the resulting decrease in the number of the uninsured) may not be as strong for noncitizens as for U.S. citizens. Nonetheless, the ability of lawfully present noncitizens who are Medicaid-ineligible to purchase insurance through an exchange may be a factor in decreasing the uninsured rate for noncitizen populations with incomes at or below 133% of poverty.

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[76] The difference between the noncitizens and naturalized citizens is significant at the .1 level.

[77] As discussed above, beginning in 2014, or sooner at state option, PPACA requires states to expand Medicaid to certain individuals who are under age 65 with income up to 133% of the FPL.